September 30, 1997, BellSouth has completed just one physical collocation in Louisiana and only twenty-one throughout its nine-state region. See Milner Aff. ¶ 23. Thus, BellSouth has not yet established standard procedures, on which CLECs can plan and rely, through a course of practice, and there is no track record that CLECs can use to ensure that BellSouth provides collocation on reasonable and nondiscriminatory terms after it obtains in-region long distance authority. BellSouth does not even represent that those collocations that have been completed were completed on time and on other terms and conditions that comply with the Act. Just having completed collocations is insufficient -- they must have been completed in a reasonable and nondiscriminatory manner, using procedures and intervals that can be measured and enforced. Thus, although BellSouth had completed a physical collocation in Florida, the Florida PSC nonetheless held that BellSouth was not providing collocation in accordance with the Act because of untimeliness and lack of parity. FPSC Order 57. Moreover, BellSouth has not even offered collocation at forward-looking costs. See part II.D. above.

A second crucial defect in BellSouth's interconnection offering is its failure to allow CLECs to interconnect at its local tandem switches. Although on paper BellSouth seems to permit such interconnection -- at least through the BFR process -- in practice BellSouth has not made available the information that CLECs need in order to interconnect at the local tandems. See Decl. of Marcel Henry, filed in Docket No. 97-208, ¶ 27 (ex. B hereto); Supp. Decl. of Marcel Henry ¶¶ 8-9 (ex. A hereto). Thus, while BellSouth and independent local telephone companies exchange local traffic at the local tandems, CLECs must interconnect at the access tandem instead. This is discriminatory and, as found by the Florida PSC, violates the Act's requirement that interconnection be provided at any technically feasible point. FPSC Order 60. Removing CLECs' local traffic from BellSouth's local network and placing it on the access network used by interexchange carriers has two effects. First, it prevents the trunk groups carrying BellSouth's local traffic from sharing capacity with CLECs' local traffic, thus

reducing trunk blockage for BellSouth's customers' calls. Second, by placing the local traffic of CLECs like MCI on the trunk groups carrying interLATA traffic, it can degrade the quality of service for CLECs' local and interLATA customers. Henry Decl. ¶ 27. In other words, BellSouth's resistance to CLECs' interconnection at the local tandems is a mechanism to avoid providing interconnection that is at parity to the interconnection that BellSouth provides to itself and to independent LECs.

Unbundled Local Loops. Nowhere in its application does BellSouth demonstrate that it provides equal-in-quality access to unbundled local loops, one of the most important checklist items for facilities-based local competition. MCI's local entry plans, for example, rely on the availability of unbundled loops via collocation. See Henry Decl. ¶ 13. Parity as to timeliness in the provisioning of unbundled loops is particularly important because of the clear and direct influence that it has on CLECs' ability to compete: CLECs will have difficulty attracting customers if BellSouth forces customers to wait five days to initiate service with a CLEC but gives them BellSouth service in one day. See Henry Decl. ¶ 38. Yet BellSouth has provided no evidence to support the conclusion that it can and will provide unbundled loops at parity.

Similarly, BellSouth does not adequately address important implementation concerns relating to loop cutovers that must be coordinated with interim local number portability ("ILNP"). If ILNP and loop cutovers are not coordinated by BellSouth, the CLEC's customer will suffer a loss of service. See Henry Decl. ¶¶ 50-52. Yet BellSouth makes no commitment to coordinate loop cutovers and ILNP, and its affidavits simply assume that having provided loops and ILNP is sufficient to demonstrate checklist compliance, without addressing the procedural details that are critical to nondiscriminatory access. See Varner Aff. ¶¶ 168-70; Milner Aff. ¶ 106.[44]

[44] BellSouth claims that it commits in its SGAT to providing coordinated cutovers. BellSouth SC Reply Br. at 78. In fact, both the South Carolina and Louisiana SGATs simply assert in vague terms that BellSouth will provide number portability with "minimum impairment of functionality,

Unbundled Local Switching. BellSouth does not offer adequate proof that it can provide unbundled switching -- another critical unbundled network element -- on terms and conditions that comply with the Act. BellSouth points to no testing that has been done to determine that BellSouth can provide an unbundled local switching element with all features, functions, and capabilities of the switch. MCI's own experience indicates that BellSouth is not prepared to offer unbundled switching as a standard network element: MCI's request for unbundled local switching in Florida has been pushed to the BFR process and has yet to be resolved. See Henry Decl. ¶ 41.

Reciprocal Compensation. BellSouth does not provide for reciprocal compensation for termination of calls because it fails to recognize that MCI's and other CLECs' switches can perform the same functions as BellSouth's tandem switches. See Henry Decl. ¶¶ 57-58. BellSouth's network utilizes a "star" topography, in which several local switches subtend a central tandem switch. CLEC networks, by contrast, generally utilize a "ring" technology, in which a single switch connected to a fiber ring serves an equivalent geographic area. In the CLEC network, call termination that would require tandem switching in BellSouth's network is accomplished with the single switch. However, the CLEC will not be compensated at the rate that BellSouth is compensated for tandem switching. This is the result of the line BellSouth draws between rates for tandem switching and rates for end office switching. See SGAT § XIII. & Att. A. Apparently, BellSouth will pay the CLEC only the end office termination rate even when the CLEC switch has the same functionality and geographic scope of a BellSouth tandem. This is not reciprocal compensation as required by the Act.[45]

---

quality, reliability and convenience," a far cry from a specific commitment with specific procedures to coordinate ILNP with unbundled loop cutovers.

[45] BellSouth characterizes MCI's position as "preposterous," BellSouth SC Reply Br. at 81, Varner SC Reply Aff. ¶ 19, without even attempting to explain why MCI should not be compensated at the tandem rate when its switch performs the same function as a BellSouth tandem.

Directory Listings. BellSouth's directory assistance database is a network element required to be unbundled by section 251(c)(3). In addition, nondiscriminatory access to directory assistance services is a stand-alone requirement of section 271(c)(2)(B)(vii)(II) of the checklist. Finally, BellSouth's duty to provide dialing parity includes the duty to provide nondiscriminatory access to directory listings. See 47 U.S.C. § 251(b)(3). Thus, three separate provisions of the checklist -- items (ii), (vii), and (xii) -- require BellSouth to provide CLECs with its directory assistance database on nondiscriminatory terms. BellSouth has not done so.

BellSouth has informed MCI that it will not provide its entire directory assistance database, but only the listings for customers of BellSouth itself and selected independent local telephone companies. BellSouth's policy of refusing to provide listings for customers of all independent local companies violates BellSouth's obligation to provide directory listings at parity. See 47 U.S.C. § 251(b)(3). While BellSouth's directory assistance operators have access to a complete database including listings of independent telephone companies' customers, CLECs' operators do not. BellSouth's operators' access to such listings is clear from their ability to provide independent companies' listings as part of BellSouth's newly launched national directory assistance service. See Henry Decl. ¶ 56. This is not parity, and it impedes CLECs' ability to compete. MCI believes that BellSouth can provide listings to CLECs without violating any confidentiality agreement,[46] but if BellSouth chose to erect a contractual bar, then it must obtain the clearance it needs or end the discrimination by not using such listings itself.

In addition, BellSouth has set up an unreasonable policy by which CLECs' customers' listings are dropped from directory assistance, white pages, and yellow pages when the customer is migrated

[46] MCI expects that BellSouth's sharing of listings with interconnected CLECs would be an appropriate use of the listings under BellSouth's agreements with independent telephone companies, just as BellSouth's leasing of unbundled network elements it obtains from third-party vendors would not violate intellectual property rights of those vendors.

from BellSouth to the CLEC, unless the CLEC goes to the trouble of making a separate request that the listings remain intact. See Henry Decl. ¶ 43. The assumption should be that end users wish to remain listed unless they indicate otherwise, not that they would want or expect their listings to be dropped just because they changed local carriers. BellSouth's policy creates another unnecessary stumbling block to the development of effective competition.

Dark Fiber. BellSouth does not provide dark fiber. None of BellSouth's agreements with PrimeCo, Sprint Spectrum, or MereTel mentions dark fiber, and the section covering dark fiber in the AT&T agreement is marked "deleted." AT&T Agr., Attach. 2, at 72-73. Nor does the SGAT offer dark fiber. This is because BellSouth successfully argued to the LPSC that dark fiber -- unused transmission media in the ILEC network -- is not a network element required to be unbundled. See AT&T Arb. Order at 43. However, dark fiber is a network element that CLECs need in order to extend their networks in an efficient manner. Not having access to dark fiber impairs MCI's and other CLECs' ability to compete with BellSouth in its local markets. See Henry Aff. ¶ 36.

Number Portability. In the Michigan Order, this Commission strongly emphasized the importance of number portability to the development of competition, and indicated that it would consider as part of its section 271 review whether the BOC is on track to deploy long-term number portability consistent with the Commission's schedule. See Mich. Order ¶ 342. The Commission specifically noted that it will carefully examine the status of the BOC's long-term number portability implementation, and that it expects a detailed showing of that implementation status in section 271 applications. See id. BellSouth has not made such a showing. See Henry Aff. ¶ 54. Moreover, in an ex parte presentation on October 17, 1997 (ex. O hereto), BellSouth informed the Commission that it might need an extension of its March 31, 1998 deadline for implementation of permanent number portability, but that (because testing will run through the end of January) it might not be able to request

such an extension more than 60 days before that deadline, as required by the Commission's rules. See 47 C.F.R. § 52.31(d); Mich. Order ¶ 343. To comply with checklist item (xi), BellSouth must implement permanent number portability on schedule, or at the very least file a timely request for an extension. Mich. Order ¶ 343. Apparently, BellSouth is unable at this time to commit to doing either.

Bona Fide Request Process. Finally, one defect that cuts across many checklist items is BellSouth's repeated reliance on the BFR process. The process is slow -- it allows BellSouth up to 90 days just to give the CLEC a quote stating the price and the terms on which it will provide the requested item. See AT&T Agr., Attach. 14. Yet BellSouth invokes this non-standard ordering process over and over again, even for concededly technically feasible, standard items that BellSouth is obligated to provide. For example, BellSouth requires use of the BFR process for CLECs to obtain interconnection via a meet-point arrangement, two-way trunking for the exchange of local traffic between the CLEC and BellSouth, unbundled transport with capacity greater than DS-1, additional types of unbundled loops and ports, and forms of ILNP other than remote call forwarding and direct inward dialing, Varner Aff. ¶¶ 47, 77, 107, 109, 113, 168. The effect of BellSouth's insistence on the BFR process in these and other instances is to delay unnecessarily CLECs' competitive development. BellSouth does not impose such artificial delays on itself.

## III. BELLSOUTH AGAIN HAS FAILED TO DEMONSTRATE THAT IT WILL COMPLY WITH THE REQUIREMENTS OF SECTION 272.

BellSouth should not be granted authority to provide in-region interLATA service because it has not demonstrated that "the requested authorization will be carried out in accordance with the requirements of section 272," as section 271(d)(3)(B) requires. BellSouth has submitted various affidavits claiming that BellSouth, BellSouth Telecommunications, Inc. ("BST"), and BellSouth Long Distance, Inc. ("BSLD") will meet each of section 272's obligations. See, e.g., Jarvis Aff. ¶¶ 3-14,

Cochran Aff. ¶¶ 4-32; Varner Aff. ¶¶ 194-231. But beyond the conclusory assertions of its affiants, BellSouth has submitted precious little information evidencing a commitment to comply with section 272, and its continued avoidance of key issues is striking. BellSouth has failed to establish that it will comply with its established obligations to disclose the details of all affiliate transactions, and to deal with its affiliate on an arm's length and nondiscriminatory basis.

The disclosure requirements of section 272 are contained in subsection (b)(5), which requires a BOC and its long distance affiliate to conduct all transactions between them at arm's length, "with any such transactions reduced to writing and available for public inspection." The affiliate must "at a minimum . . . provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page."[47] Contrary to what BellSouth argues (BST Br. 76), it is required to comply with the disclosure obligations of section 272(b)(5) and the Accounting Safeguards Order prior to receiving section 271 authorization. Mich. Order ¶ 371. Section 272 also contains several separate and discrete nondiscrimination requirements. For example, section 272(c)(1) provides that a BOC may not "discriminate between [its affiliate] . . . and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." Section 272(b)(1) requires that a BOC and its long distance affiliate operate independently of each other and "imposes requirements beyond those listed in sections 272(b)(2)-(5)."[48] In making the predictive judgment

---

[47] Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, ¶ 122, 12 F.C.C.R. 2993 (rel. Dec. 24, 1996) ("Accounting Safeguards Order") (emphasis added).

[48] First Report and Order, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, ¶ 156, 11 F.C.C.R. 21905 (rel. Dec. 24, 1996) ("Non-Accounting Order").

whether a BOC and its affiliate can be expected to comply with section 272, "the past and present behavior of the BOC applicant is highly relevant." Mich. Order ¶ 366.

### A. BellSouth Has Not Demonstrated Present or Future Compliance With Respect to Transactions Between BSLD and BST.

BellSouth has not demonstrated that it will comply either with the reporting requirements relating to affiliate transactions or with the requirement that these transactions be negotiated and performed on a nondiscriminatory, arm's length basis. BellSouth plainly has not provided the disclosure of the details of the substance, terms, and conditions of past transactions between BST and BSLD that is required by section 272, and its future compliance can hardly be presumed. Analysis of the particular transactions partially disclosed by BellSouth suggests that BST did not conduct the transactions on an arm's length, nondiscriminatory basis, and did not give unaffiliated carriers an equal opportunity to deal with BST.

For BellSouth to comply with section 272(b)(5), it must publicly disclose all relevant transactions in which its affiliates have participated. But BellSouth has not provided detailed descriptions (including terms and conditions) of all of the transactions between BST and BSLD. Instead, BellSouth has submitted affidavits that briefly describe fifteen BST/BSLD transactions and summarize, in even more conclusory fashion, some of the subject matters of the pending BST/BSLD negotiations. Although BellSouth has slightly augmented the disclosures it made in connection with its application to provide in-region interLATA service in South Carolina, the additional information provided fails to satisfy BellSouth's disclosure obligations, and instead raises further questions about BellSouth's willingness and ability to comply with the disclosure obligations of section 272. While BellSouth has established an Internet page for disclosure of BST/BSLD transactions, the summary of "past transactions" posted there contains no more description than do the affidavits.

Although BellSouth claims that its disclosures satisfy the requirements of section 272, neither the affidavits[49] nor the Internet summary certifies that BellSouth has disclosed all relevant past and present transactions and ongoing negotiations.[50] Instead, BellSouth "discloses" that "BST has performed and billed BSLD for the [certain] described services performed through August 31, 1997." See, e.g., Jarvis Aff. ¶ 14.c. This arbitrarily limited disclosure is inadequate: it does not certify that the affiant is describing all services performed and billed; and it does not explain why BST has declined to disclose transactions that were performed or billed after August 31. And even if BellSouth deigned to disclose all relevant transactions, it apparently does not have the systems in place to track interaffiliate transactions in a timely and accurate manner. Despite using the August 31 cutoff date for its disclosures, BellSouth admits that "certain bills delivered by BST totaling $44,500 are under investigation and are not included [in the summary of past transactions]." Jarvis Aff. ¶ 14.c. BellSouth does not reveal what kind of investigation this is, or why it could not be completed in the more than two months since August 31.

With respect to the fifteen transactions that it has listed, BellSouth does not provide a detailed description of the assets and services involved in the transactions and the terms and conditions of the

---

[49] While BellSouth argues in its brief that it has "included with its application descriptions of all transactions between BST and BSLD to date," citing the Jarvis affidavit, that affidavit studiously avoids representing that "all transactions" have been disclosed. BST Br. 76; Jarvis Aff. ¶ 14. Similarly, BellSouth does not certify that the agreements posted on its Internet homepage are the only agreements between BST and BSLD, nor does it provide any explanation of how these agreements relate to the summaries of past and present transactions.

[50] BellSouth apparently believes that the relevant time period for disclosure begins when BSLD was incorporated. BST Br. 76. But as MCI has argued in the Commission's preliminary biennial audit requirements docket (AAD 97-83), transactions between the BOC and its section 272 affiliate before that affiliate is fully organized and staffed may present a serious threat to competition. To comply with the disclosure requirements of section 272, in addition to disclosing all transactions between BST and BSLD, BellSouth must disclose the terms and conditions under which the entity subsequently incorporated as BSLD received any assets or services from BST prior to incorporation.

transfers. Instead, BellSouth provides only general summaries of various projects performed for BSLD. There are no details of the transactions, and no break-down of the costs involved, the rates charged, or the specific time periods involved. Instead, the summaries assert an aggregate cost of services, add that the services were provided at "fully distributed costs" and provide broad ranges of months in which the services were performed. Jarvis Aff. ¶¶ 14.c.(1)-(15). This does not provide the detail needed by a CLEC, for example, to be certain it can procure comparable terms. In sum, there is insufficient information for this Commission, or any third party, to conclude that the service was provided on nondiscriminatory, arm's length terms.

Inconsistencies between BellSouth's disclosures in its application for in-region, interLATA authority in South Carolina and BellSouth's disclosures in this application raise additional questions about BellSouth's willingness and ability to provide accurate and complete information about its interaffiliate transactions. For example, in its South Carolina application BellSouth disclosed that through July 31, 1997 it had provided BSLD with initial planning services, collocation rights and mail services, at a cost to BSLD of $23,700, $2,204,000 and $67,800, respectively.[51] In the present application, however, BellSouth reports that these same services continued to be provided during the month of August 1997, but does not report any increase in the total amounts billed to BSLD to compensate BST for this additional month of services. Jarvis Aff. ¶¶ 14.c.(6), 14.c.(14) and 14.c.(15). It is impossible for the Commission to determine from the information provided by BellSouth whether these inconsistencies result from a failure by BST to bill BSLD for the full cost of the services

[51] Affidavit of Victor E. Jarvis In the Matter of Application by BellSouth Corporation, Bell South Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, ¶¶ 14.c.6, 14.c.14 and 14.c.15 (September 30, 1997).

provided, or from shortcomings in BellSouth's disclosure process. Neither possibility bodes well for BellSouth's future compliance with section 272.

Even the limited information provided in BellSouth's affidavits and on its Internet page raises serious questions about compliance with the substantive nondiscrimination obligations of section 272. For example, the transactions disclosed appear to involve the discriminatory transfers of BST employees and discriminatory use of the BellSouth brand name. At the least, BellSouth has submitted insufficient information to dispel these concerns.

Improper Employee Reassignments. BellSouth reveals that employees from BST have been reassigned to BSLD. Jarvis Aff. ¶ 14.c.(9). Because BellSouth does not disclose how these employees chose (or were chosen) to be reassigned, the positions that these employees held with BST or the information that they acquired in those positions, it is impossible to determine whether BST strategically provided BSLD, through these reassignments, with competitively sensitive information about BST's operations, network and future actions.

Such information would be extremely useful to interexchange carriers that interconnect with BST, who constantly are developing new products and services that require interconnection with BST's current and future network. By transferring selected BST employees to BSLD, BellSouth can transfer (at no cost to BSLD) valuable proprietary information and a substantial competitive advantage at the expense of BSLD's competitors. To avoid such discrimination, BST would have to take effective steps to ensure that these employees either: (a) will not disclose or use for the benefit of BSLD any competitively sensitive information that they acquired at BST; or (b) would have to make timely disclosure to unaffiliated carriers of such information.

BellSouth argues that these transfers are justified by BSLD's "right to hire from the same talent pool" as MCI and other interexchange carriers ("IXCs"), BST SC Reply Comments 84, but such an

argument turns a blind eye to the unique relationship between BSLD and BST. While MCI has the "right" to attempt to hire former employees of BST, MCI cannot: (a) obtain BST's cooperation in transferring those BST employees whose experience and knowledge about BST's operations are most useful; or (b) use confidential BST information that these employees obtained and that is subject to a nondisclosure obligation when the employee leaves BST. BellSouth casually claims that it has no obligation to ensure that BSLD employees do not use for BSLD's benefit confidential information they obtained as BST employees. BST SC Reply Comments 84-85. But section 272(c)(1) could not be more clear that a BOC has to provide information about its operations to all long distance carriers, unaffiliated and affiliated, on a non-discriminatory basis.

In addition, for some period of time, BST paid the salaries and benefits of some of BSLD's employees. BellSouth states that "BST continued to incur payroll and benefit costs for a brief time after the employees accepted positions and began work at BSLD." Jarvis Aff. ¶ 14.c.(9). BST, however, presumably does not continue to pay the salary and benefits of employees, after those employees have joined another IXC, to facilitate a more rapid move to the IXC.

BellSouth Brand Name. As its name shows, BSLD will use the "BellSouth" brand name in marketing its long distance services. BellSouth considers its brand name to be extremely valuable, see Gilbert Aff. ¶ 28, and it has built that value at least in part through substantial expenditure by BST.[52] BSLD does not disclose any agreement with BST compensating BST for use of the brand name or for BST's contribution to the value of the brand name. Tacitly admitting that no such compensation has been paid, BellSouth argues that the brand name belongs to BellSouth Corporation, not to BST. BST

[52] For example, at a September 1996 conference in New York attended by the BOCs, BST acknowledged that its aggressive strategy of "brand building" had succeeded in raising the percentage of people who recognized the "BellSouth" brand name from less than 30% to more than 80% in less than a year. News Highlights: Bells, GTE Lay Out Marketing Strategies, Swap Success Stories at New York Conference, Telecommunications Reports, September 23, 1996, at 6-11.

SC Reply Comments 85. But the important issue for purposes of section 272 is not which entity owns the brand name, but whether a BOC has contributed to the value of a brand name that benefits a 272 affiliate providing service under the same brand name. If the brand name is as valuable as BellSouth claims, BSLD should be compensating BST for the considerable sums that BST expended to promote the brand name, and its acknowledged failure to do so confers on it a discriminatory competitive advantage.[53]

### B. BellSouth Has Not Established Essential Performance Standards and Reporting for its Provision of Exchange Access.

As explained in part II(C) above, it is critical that BellSouth establish performance standards, and report on its compliance with those standards, in connection with its provision of interconnection, access, and resale to CLECs. Equally important for section 272 purposes, BellSouth must specify performance standards it will abide by for the provision of exchange access services to affiliated and unaffiliated interexchange carriers, and it must provide reports on a regular basis sufficient to show whether it has complied with these standards.

Although BellSouth asserts that it will "continue to participate in public standards-setting bodies" and not "discriminate in favor of BSLD in the establishment of any standards, including but not limited to industry-wide standards that affect the interconnection or interoperability of public networks," Varner Aff. ¶ 201, BellSouth has not described performance standards that it commits to meet, nor specific reporting on its actual performance in relation to those standards. BellSouth claims that it is "developing" additional reports to demonstrate nondiscrimination, Varner Aff. ¶ 212, but it

---

[53] Although the Commission has decided in the context of its general affiliate transaction rules that compensation for the value of brand names is not necessary, the Commission has not addressed this issue in the context of section 272. The language and purpose of section 272 dictate that the long distance affiliate compensate the BOC for the BOC's expenditures of ratepayer funds to increase the value of the brand name, and that this transaction be conducted on an arm's length, nondiscriminatory basis.

continues to make no commitment to produce specific reports comparing the level of service to its affiliate to the level of service to competing IXCs. BellSouth must commit to these standard and reporting systems before it is granted section 271 authority, for once that incentive is removed BellSouth is likely to show little interest in establishing the standards and necessary reporting systems. By refusing to make such a commitment, BellSouth fails to carry its burden to demonstrate compliance with section 272.

### C. BellSouth Has Not Demonstrated Compliance With Respect to Its Official Services Network.

BST continues to fail to address whether and how BSLD will utilize BST's official services network to provide in-region interexchange service. BST, like other BOCs, currently owns substantial long distance network facilities that were purportedly constructed to support BST's local exchange services. United States v. Western Elec. Co., 569 F. Supp. 1057, 1098-99 (D.D.C. 1983). BellSouth apparently constructed these networks with far more capacity than it could ever use for official services. Because captive ratepayers (including interexchange carriers that purchased access) paid for the construction of these networks, it would violate the nondiscrimination and cross-subsidization requirements of section 272 for BSLD to obtain the use of these networks on anything other than an arm's length, nondiscriminatory basis.

BellSouth's application and supporting affidavits do not address whether its official services network will be used by BSLD, and if so, on what terms.[54] Nor has BellSouth indicated whether there

[54] In the remand from the D.C. Circuit concerning section 272(e)(4), the Commission explicitly asked the BOCs, including BellSouth, to provide information about how they intended to use their official service networks in providing in-region interexchange service. Comments Requested in Connection With Expedited Reconsideration of Interpretation of Section 272(e)(4), CC Docket No. 96-149, ¶ 4 (rel. April 3, 1997). Notably, BellSouth, like other BOCs, did not respond to this request.

have been any discussions between BST and BSLD about BSLD's potential use of these networks. The Commission has ruled that any transfers relating to these networks be on a nondiscriminatory basis and that all entities have an equal opportunity to obtain access to the networks. Non-Accounting Order ¶¶ 218, 266. BellSouth makes only the conclusory assertions that "BST will comply with paragraph 266" and that "to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, it will make such services or facilities available to all carriers at the same rates and on the same terms and conditions." Varner Aff. ¶198, 220. BellSouth does not explain how it will comply with the Non-Accounting Order if it wants to sell any capacity on that network. In this respect as well, BellSouth has failed demonstrate compliance with section 272.

## IV. THE PUBLIC INTEREST WOULD NOT BE ADVANCED BY THE APPROVAL OF BELLSOUTH'S APPLICATION TO PROVIDE LONG-DISTANCE SERVICES IN LOUISIANA.

Because of the pallid state of local competition in Louisiana and BellSouth's continuing actions and incentives to hinder any real competitive challenge to its local monopoly, BellSouth's application to provide long distance services in Louisiana flunks the public interest test. In the application at hand, BellSouth has repeated almost verbatim the same, threadbare public interest arguments that it advanced in its earlier application to provide long distance in South Carolina. Continuing its disregard of prior regulatory pronouncements, BellSouth did not even bother to update its application in any meaningful way in response to the critical comments that the Department of Justice filed concerning BellSouth's South Carolina application. As shown below, approval of BellSouth's provision of long distance in Louisiana would be positively detrimental to the public interest.

### A. The Commission's Public Interest Analysis Should Consider the Effect of BellSouth's InterLATA Entry on All Markets.

Despite the Commission's previous determination that competition in local exchange markets is

relevant to its public interest inquiry, BellSouth persists in raising the tired claim that the Commission cannot examine competition in local markets as part of its consideration of the Act's public interest test. See BST Br. 84-88.

Because the Commission has already considered and rejected this argument, see Mich. Order ¶ 386, it does not warrant a lengthy response here. MCI notes only that a public interest test contained in regulatory legislation draws its substance from the underlying purpose of the legislation.[55] Here, as the Commission has frequently observed, the Conference Committee declared that the purposes of the 1996 Act included the express goal of "opening all telecommunications markets to competition." H.R. Conf. Rep. 104-458, at 1 (Jan. 31, 1996) (emphasis added). Given this explicitly stated congressional intent, the Commission stands on solid ground in rejecting BellSouth's crabbed view of the public interest.

### B. The Public Interest Factors Discussed by the Commission in the *Michigan Order* Require the Rejection of BellSouth's Application.

In the Michigan Order, the Commission discussed a number of the factors that it would consider in determining whether a particular application was in the public interest, convenience, and necessity. See Mich. Order ¶¶ 381-402. These factors are relevant to determining both whether local competition exists and whether, once established, local competition will remain viable. Analysis of these factors requires rejection of BellSouth's application.

The Absence of Competition. A critical prerequisite to section 271 approval is "whether all procompetitive entry strategies are available to new entrants." Id. ¶ 387. The Commission explained that the best proof of the availability of these entry strategies is "data on the nature and extent of actual local competition." Id. ¶ 391. If this data is absent, then the Commission would presume that local

[55] This proposition is undisputed. See BST Br. 84 n.52.

competition is non-existent and would focus its inquiry on the reasons for the lack of competitive entry. Id.

In Louisiana, local competition is extremely limited. Even viewing the evidence of local competition supplied by BellSouth in the most favorable light, the evidence is hardly convincing.[56] For the most part, BellSouth provides anecdotal information about the state of competition in Louisiana, see BST Br. 17-20, and is reduced to making the spurious argument that PCS providers constitute real competition to its ubiquitous, loop-based local exchange service. Compare BST Br. 8-17 with part I.B. above. BellSouth is thus not yet facing any meaningful local competition.

The almost total lack of competition is shown by internal information available to MCI in its role as a long distance carrier. This information, derived from the terminating access minutes for which MCI reimburses local carriers, shows that over the last six months, BellSouth and other ILECs have terminated no less than 99.86% of the terminating access minutes that MCI reimbursed in Louisiana. See Declaration of Henry G. Hultquist (ex. E hereto).

Although BellSouth does not dispute that CLECs are taking reasonable steps to provide facilities-based local service to business and residential customers, it nevertheless attempts to blame the lack of local competition on "the business decisions of competitors." BST Br. 120. In fact, many factors discussed above -- including BellSouth's inferior and discriminatory OSS, and its refusal to provide pre-existing combinations of unbundled elements or to allow access to its network on reasonable nondiscriminatory terms, explain the lack of meaningful competition in Louisiana.

---

[56] The limited amount of hard data that BellSouth provides demonstrates that local competition has made almost no headway in Louisiana. BellSouth claims that CLECs have "captured" 7,068 business and residential lines from BellSouth. See BST Br. 121. This amounts to just 0.3 percent of BellSouth's over 2.1 million access lines in Louisiana. See FCC, Preliminary Statistics of Communications Common Carriers 21, Table 2.3 (June 30, 1997) (reporting total presubscribed lines for local exchange carriers).

Moreover, final prices were not set by the LPSC until last month (two weeks before BellSouth filed this application claiming that CLECs are not moving fast enough). Now that costs have been set, the LPSC's failure to deaverage and to discount contract services arrangements, and its decision to allow BellSouth to charge vastly inflated NRCs and collocation charges that are not based on forward-looking costs, will only further deter meaningful competition in Louisiana. CLECs can hardly be criticized for delaying substantial investments in local facilities when BellSouth has not opened its market.

Lack of Safeguards for Future Competition. Equally troubling is the absence of safeguards to ensure that competition, if established, is able to survive. The Commission placed significant emphasis in the Michigan Order on the need for such safeguards. The Commission stated that, for example, it would "be interested in evidence that a BOC is making available, pursuant to contract or otherwise, any individual interconnection arrangement, service, or network element provided under any interconnection agreement to any other requesting telecommunications carrier upon the same rates, terms, and conditions as those provided in the agreement." Mich. Order ¶ 392. Yet BellSouth refuses to permit CLECs to "pick-and-choose" provisions of other carriers' agreements.[57] In the Commission's words, BellSouth's refusal to permit "pick-and-choose" will only make it that much more difficult for new entrants to "enter the market quickly without having to engage in lengthy and contentious negotiations or arbitrations with the BOC." Id. ¶ 392. Even if BellSouth can for now rely on a decision of the Eighth Circuit to decline to permit "pick-and-choose," BellSouth is not legally

[57] BellSouth has stated that it would be willing to permit CLECs to pick-and-choose entire agreements with other parties, but not particular provisions of other parties' agreements. See Henry Decl. ¶ 22 n.3. Clearly, an agreement tailored for one carrier may be entirely inappropriate for another carrier.

precluded from so permitting, and its failure to permit "pick-and-choose" is relevant to the Commission's assessment of the height of entry barriers to local competition in Louisiana.

In the Michigan Order, the Commission further suggested that evidence concerning performance standards and reporting requirements would be helpful in determining whether a local telecommunications market was likely to remain open to competition. See Mich. Order ¶¶ 393-94. Yet, in Louisiana, the performance monitoring that BellSouth has offered is not even minimally adequate to protect local competition. See part II.C. above. As a result, regulators and new entrants will find it difficult to determine whether BellSouth is backsliding on its obligation to provide nondiscriminatory access and interconnection. See Mich. Order ¶ 393. Equally important, BellSouth has not included self-executing remedies needed to hold BellSouth to any performance standards. As the Commission emphasized, "The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent." Id. ¶ 394.

Another critical safeguard absent from BellSouth's application is the provision of network elements in combinations that currently exist within BellSouth's network. See part II.B. above. Even if the Act as interpreted by the Eighth Circuit does not impose a duty on ILECs to combine elements, it surely does not preclude a BOC from agreeing to provide existing combinations without breaking them apart. No legitimate purpose is served when a BOC breaks apart existing combinations of network elements only in order to make it more difficult and expensive for CLECs to compete using these combinations -- whether these combinations permit a CLEC to provide a finished telecommunications service, or whether they are used with network elements from the CLEC's own network to provide a finished service. Breaking apart natural combinations of network elements in these circumstances

serves only to increase the costs of entry and to deprive CLECs of the economies of scale and scope that BOCs are supposed to share with them.

Accordingly, in evaluating whether the public interest would be served by the approval of BellSouth's application, the Commission may consider BellSouth's refusal to provide network elements in combination, its failure to specify the terms and conditions on which it will provide CLECs with access to its network to perform the combining function themselves, and the risk that BellSouth will renege on commitments to provide network elements like unbundled loops or unbundled switching on the ground that they are really combinations of network elements. See part II.B. above.

Other Public Interest Factors. Another factor that the Commission stated it would consider in the course of its public interest analysis is whether the BOC will permit CLECs to utilize optional payment plans for non-recurring charges. See Mich. Order ¶ 395. BellSouth does not discuss these types of payment plans in its application; if BellSouth was offering any such payment plans to CLECs, it presumably would have referenced this fact. Needless to say, BellSouth's failure to include such provisions will hamper the development of local competition in Louisiana.

The Commission also noted that its public interest analysis would be informed by examples of BOC behavior that was discriminatory or in violation of state or federal telecommunications regulations. See Id. ¶ 397. Most alarmingly, in its region BellSouth has on several occasions misused confidential CLEC information in an attempt to retain customers who had agreed to transfer their local telephone service to the CLEC. Specifically, BellSouth sent retention letters to customers in Georgia whose transfer orders had been received from CLECs, urging the customers to cancel their orders before the transfer of service. Although BellSouth assured the Georgia PSC that such letters were sent only in response to BellSouth's disconnect orders, not confidential MCI ordering information, retention letters have been received in connection with new line installations, where no disconnect

order was generated. Henry Decl. ¶ 61. Such activities effectively stifle competition and make the likelihood of future competition even dimmer. See Mich. Order ¶ 379 (discussing a similar program conducted by Ameritech Michigan).

Especially for a section 271 application that relies in part on the paper promises contained in an SGAT, it is noteworthy that BellSouth has not hesitated in the past to disregard binding contractual promises that it has made with competitors. For example, BellSouth explicitly agreed in a contract with MCI that it would lower access charges in Tennessee once the Tennessee legislature authorized price cap regulation. After the legislation was passed, BellSouth simply refused to lower its access charges. MCI was forced to file suit against BellSouth in federal court. See Henry Decl. ¶ 22 n.2. When BellSouth engages in this type of behavior, it stifles competition by making clear to new competitors that they may well face the additional costs of having to drag BellSouth into court before it will comply with even clear contractual requirements.

In addition, BellSouth has repeatedly disregarded or contested the Commission's regulations implementing the 1996 Act. BellSouth's cavalier attitude toward the Commission's rulings is demonstrated by the numerous challenges that BellSouth has made to particular Commission requirements. As discussed in more detail above, BellSouth refuses to comply with Commission precedent concerning combinations of unbundled elements, performance standards, pricing (including deaveraging), and contract services arrangements.[58] Furthermore, BellSouth claims that the Michigan

[58] See also BST Br. 24 ("There are a few areas in which BellSouth disagrees with the interpretations of checklist requirements suggested in the Commission's Michigan Order, particularly regarding pricing, combinations of unbundled network elements (an issue recently resolved in BellSouth's favor by the Eighth Circuit), and certain OSS performance measurements and standards."); id. at 24 nn.27 & 28 (discussing various legal challenges BellSouth has raised to Commission rulings); BellSouth Corp. v. FCC, Joint Brief of Petitioner BellSouth Corp. and Intervenor U S West, No. 97-1113 (D.C. Cir. Oct. 31, 1997) (raising constitutional challenges to the Commission's regulations under section 274).

Order improperly requires it to "provide data on the underlying items requested by means of OSSs," and it has in fact failed to provide this data. See Petition of BellSouth Corporation for Reconsideration and Clarification, filed in CC Docket No. 97-137, at 4 (Sept. 18, 1997). BellSouth has also challenged the Commission's determination that a BOC is prohibited from mentioning its affiliated long distance carrier in marketing scripts unless a customer has affirmatively requested the names of long distance carriers. See id. at 7-10.

Notably, BellSouth declined to address the several public interest factors discussed by the Commission in the Michigan Order.[59] This omission provides further evidence, if any was necessary, that BellSouth simply does not feel constrained by Commission precedent. BellSouth's intransigence and resistance to regulation at this point in time -- when it still needs the Commission's authorization to enter long distance -- provides a worrisome preview of BellSouth's likely behavior once it has swallowed the "carrot" of long distance entry.

In summary, BellSouth has simply refused to satisfy -- or even acknowledge -- many of the key public interest factors discussed by the Commission in its Michigan Order.[60]

---

[59] Although BellSouth has asked the Commission to reconsider various aspects of the Michigan Order, including the Commission's discussion of public interest issues, the Commission has yet to act on BellSouth's reconsideration petition, and the Michigan Order remains binding. See Petition of BellSouth Corporation for Reconsideration and Clarification, filed in CC Docket No. 97-137, at 10-16 (Sept. 18, 1997).

[60] The Commission has invited comment on additional factors that would show whether a BOC has opened its market to competition, as well as comment on conditions that could be placed on BOC entry into the long distance market. See Mich. Order ¶¶ 398, 400-01. However, because BellSouth is so far from even offering to comply with multiple provisions of the Act, CLECs are only beginning to discover the multiple deficiencies in BellSouth's practices, processes and promises. It would therefore be impossible at this stage to develop an even minimally useful list of the hundreds of conditions and contingent conditions (e.g., conditions on the adequacy of systems BellSouth has not even developed yet) needed to ensure BellSouth's compliance with the Act.

### C. BellSouth's Entry into the Long-Distance Market Would Not Benefit Long-Distance Customers.

Instead of responding to the Commission's public interest concerns, BellSouth attempts to show that its provision of long distance service in Louisiana would bring a cornucopia of economic benefits to the long distance market in general and to Louisiana consumers in particular. Central to its thesis are the notions that the long distance market is not presently competitive, that experience with incumbent local carriers' entry into long distance has been favorable, and that BellSouth is well-situated to provide long distance services in Louisiana. See BST Br. 88-101.

BellSouth's claims of significant increases in consumer welfare as the result of its entry into long distance are spurious. Consumers will derive no benefit from legitimate BellSouth competition in the long distance market, and consumers will benefit to a much greater extent if local competition in Louisiana develops prior to BellSouth's entry. The risks to local competition from premature BOC entry into long distance far exceed any alleged benefits from any increase in long distance competition resulting from that entry.

#### 1. The Long-Distance Market is Already Competitive.

As Professor Robert Hall demonstrates, competition in the long distance market is robust. Declaration of Robert Hall on behalf of MCI, filed in CC Docket No. 97-208, ¶¶ 120-81 (Oct.19, 1997) (ex. F hereto). Moreover, this competition far outpaces that in the local market. See Supplemental Affidavit of Marius Schwartz on behalf of DOJ, filed in CC Docket No. 97-208, ¶ 18 (Nov. 3, 1997) (hereinafter "Schwartz Supp. Aff.") (ex. N hereto). In support of its argument that the long distance market is not competitive, BellSouth claims that the long distance carriers have not passed on the reductions in access charges that have taken place since 1990. In fact, as Professor Hall demonstrates, the major interexchange carriers have consistently passed on decreases in access charges to their

customers: revenue per minute (excluding access charges) has exhibited a steady decline in the last decade. See Hall Decl. ¶¶ 126-31. Undeniably, the public has benefited from the healthy competition in the long distance market. As Professor Hall explains, prices for long distance have declined sharply relative to the general price level. See id. ¶ 127. Indeed, if long distance competition were as limited and prices were as high as BellSouth claims, BellSouth and the other BOCs would have leapt at the opportunity provided in the 1996 Act to offer out-of-region long distance services immediately -- an opportunity that the BOCs have declined to pursue despite the fact that they have obtained very favorable contracts to resell interexchange services throughout the country. The truth is that BellSouth is only interested in leveraging its existing local monopoly in Louisiana into the long-distance market.

Moreover, long distance competition has benefited all customers, including low-volume callers. Discount and flat-rate plans are widely available to long-distance callers. MCI customer data indicate that the vast majority -- over 75 percent -- of its customers use discount plans, not standard rates. Nearly half of MCI's customers using standard calling rates had bills of less than $1.50 in an average month. See Hall Decl. ¶ 142. (And all of MCI's customers enjoy a rate of 5 cents/minute on Sundays). Moreover, there are a great number of "10XXX" services that customers may utilize without presubscription and without fees or monthly minimum charges. See id. ¶ 140. To the extent that rates are higher for low-volume callers, this fact is due to the fixed costs carriers incur in serving customers, not to a lack of competition. See id. ¶¶ 149-52.

### 2. ILECs have done little to enhance consumer welfare where they have been allowed into long distance.

BellSouth's brief prominently highlights the supposed benefits to competition from the entry of incumbent local exchange carriers into long distance. See BST Br. 92-94. For example, BellSouth argues that SNET's long distance rates in Connecticut are below those of AT&T. But DOJ's economic

expert has debunked BellSouth's claim that incumbent LECs such as SNET and GTE have significantly lowered prices for consumers as the result of the LECs' entry into long distance. See Schwartz Supp. Aff. ¶ 81-83. BellSouth omits to mention that the AT&T rates it is referring to are standard rates and that SNET's rates are significantly higher than the discount rates that are available from numerous carriers. See Hall Decl. ¶ 90. And for intraLATA toll calls, SNET's record is no better. Its intraLATA toll rates are significantly above those of the major interexchange carriers; ironically, its intraLATA toll rates are even above its competitors' interLATA toll rates. See id. ¶ 91. While SNET may have been able to capture rapidly a large share of the long-distance market in Connecticut, its success is due more to discriminatory acts against its competitors than to superior prices or service.[61]

### 3. BellSouth's claimed advantages in Louisiana will result in few benefits to consumers.

BellSouth devotes a significant portion of its brief to trumpeting the benefits it claims it will bring to long distance competition in Louisiana. See BST Br. 94-101. Rhetoric aside, the most concrete example it can articulate is a promised five percent rate reduction off AT&T's non-discounted rates. In other words, BellSouth intends to position itself as a high-price, not a low-price carrier in Louisiana, because numerous carriers provide much better rates than AT&T's standard rates.

---

[61] SNET has captured a large share of AT&T customers largely by terminating its joint billing agreement with AT&T. See Hall Decl. ¶ 92; Decl. of Baseman & Warren-Boulton on behalf of MCI, CC Docket No. 97-208, ¶ 25 (Oct. 17, 1997) ("Baseman Decl.") (ex. G hereto). In addition, since entering long distance, SNET has been unwilling to allow the customers of its competitors in the interexchange market to sign up for intraLATA presubscription. (SNET has made an exception to this policy for Sprint, which carries SNET's long-distance traffic.) SNET has also engaged in an anticompetitive PIC freeze campaign, which MCI has filed suit in federal court to halt. See Complaint, MCI v. SNET, Civil Action No. 397CV00810-AHN (D. Conn. filed Apr. 29, 1997). In short, the primary effect of SNET's entry has been to decrease consumer welfare. See Hall Decl. ¶ 92.